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United States Circuit Court. Western District of Missouri.

UNITED STATES v. CRAFTON.

An indictment founded upon § 5440 of the Revised Statutes, alleging generally a conspiracy to defraud the United States, but failing to set forth the nature of the fraud, and the manner in which or the means by which it was to be effected, is insufficient, and a demurrer therefore will be sustained.

A conspiracy to defraud the United States cannot exist in contemplation of said § 5440, where the contemplated fraud depends upon the passage of a future act of Congress to make it effective.

DEMURRER to indictment for conspiracy to defraud the United States.

The indictment in substance charged:—

1. That John D. Crafton, one of the defendants, was, at the time charged, the adjutant-general and acting paymaster-general of the state of Missouri; that John D. Crafton, Jr., was a clerk in his office; that the defendants, George M. Irvin, John C. Bender and Waller Young, were acting as the agents and attorneys for the collection of a claim and demand alleged to be due the members of a certain company of enrolled Missouri militia, growing out of their alleged services in the war for the suppression of the rebellion.

2. That for the purpose of defrauding the United States out of the money alleged to be due for such services, the said defendants conspired together to obtain the payment thereof out of the treasury of the United States.

3. That to effect the object of said conspiracy, the defendants Irvin, Bender and Young, made a false and fictitious muster and pay-roll of said company, and presented the same to the defendant, John D. Crafton, as such acting paymaster-general, to audit, approve and allow the claim contained in said roll.

4. That to further effect the object of said conspiracy, the defendant, John D. Crafton, as acting paymaster-general, did audit, approve and allow such claim, and issued certificates of indebtedness of the state of Missouri, for the amount claimed to be due on said roll, and delivered them to the defendant Young.

5. That further to effect the object of the conspiracy, all of the defendants transmitted the false and fictitious muster and pay-roll of said company to the third auditor of the treasury of the United States, with the amount on said roll as audited, approved and allowed, and showing the issue of the certificates of indebtedness

therefor—for file by the third auditor in the treasury department of the United States, until such time as Congress should thereafter provide for the payment of the fraudulent claim contained in and upon said roll.

6. That further to effect the object of the conspiracy, the defendants employed Craig and Strong to secure the passage of a bill which had been introduced in the Senate of the United States for the payment of said fraudulent claims.

A. W. Mullins, for the United States.

H. B. Johnson, Jeff. Chandler and A. M. Lay, for defendants.

The opinion of the court was delivered by

DILLON, Circuit Judge.—The indictment is founded upon sect. 5440 of the Revised Statutes, which is as follows: "If two or more persons conspire * * * to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of," &c. The nature of the acts charged against the defendants in the indictment are more fully seen by reference to the act of the legislature of Missouri, approved March 19th 1874, entitled, "An act to audit and adjust the war debt of the state:" Laws 1874, p. 102, sect. 10, *et seq.* The claims "of officers and soldiers of the enrolled Missouri militia" were primarily, and until assumed by Congress exclusively, against the state and not against the general government. The latter has never assumed their payment; if at the time that the acts set forth in the indictment were done the general government had provided for the payment of such claims out of its own treasury, undoubtedly those acts, fraudulent in their nature and object, would have been criminally punishable. It is at just this point that the case stated in the indictment is vulnerable. Under the recognised rules of criminal pleading it is not sufficient to allege generally a conspiracy to defraud, but the nature of the fraud and to the required extent the manner in which or the means by which it was to be effected, must be averred: *United States v. Cruikshank*, 2 Otto 542, 558. In the case at bar, this has been attempted by the pleader, but the difficulty is that it appears from the averments that the alleged conspiracy to defraud the United States was under the existing legislation of Congress legally impossible. The fraudulent muster and pay-

roll was transmitted to the third auditor to be *filed* to await the passage of an Act of Congress which should provide for the payment of the fraudulent claims contained therein. It was not filed as a claim against the United States; on the contrary, the debt to the persons named in the roll was the debt of the state, and would remain such unless Congress should assume it. It could not be known that such assumption would ever be made, or if made that the said rolls would have any legal significance or value.

However fraudulent in ulterior design, or morally reprehensible, the acts charged in the indictment may be, still our judgment is that sect. 5440 of the Revised Statutes cannot be extended to a case where the fraud which the conspiracy contemplated can only be effected in case an Act of Congress shall be thereafter passed of a nature to fit the prior conspiracy and give it something to feed upon. The demurrer to the indictment must be sustained.

KREKEL, J., concurred.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹

SUPREME COURT OF ERRORS OF CONNECTICUT.²

SUPREME COURT OF KANSAS.³

SUPREME COURT OF NEW JERSEY.⁴

SUPREME COURT OF RHODE ISLAND.⁵

SUPREME COURT OF WISCONSIN.⁶

ACTION. See *Sunday*.

Founded on Act forbidden by Statute.—When a plaintiff's cause of action arises from a violation of law on his part, his suit cannot be sustained, and it is immaterial whether the violation of law appears from the plaintiff's direct evidence, or is elicited from him by legitimate cross-examination: *Smith v. Rollins*, 11 R. I.

Violation of Municipal Ordinance.—The violation of a duty imposed by a municipal ordinance, and sanctioned by a fine, will not support an action on the case for special damages in favor of one injured by the violation and against the violator: *Heeney v Sprague*, 11 R. I.

¹ Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1877. The cases will probably be reported in 5 or 6 Otto.

² From John Hooker, Esq., Reporter; to appear in 44 Connecticut Reports.

³ From Hon. W. C. Webb, Reporter; to appear in 18 or 19 Kansas Reports.

⁴ From G. D. W. Vroom, Esq., Reporter; to appear in 10 Vroom's Reports.

⁵ From Arnold Green, Esq., Reporter; to appear in 11 Rhode Island Reports.

⁶ From Hon. O. M. Conover, Reporter; to appear in 42 Wisconsin Reports.